

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 96-0333 RST

Sales and Use Tax

For The Periods: 1993 Through 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax - Utility Use in Production

Authority: IC 6-2.5-5-5.1; IC 6-2.5-4-5; 45 IAC 2.2-4-13

The taxpayer believes that it is entitled to a predominant usage exemption of utilities used in production for the period under audit.

II. Tax Administration – Imposition of Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

During the audit period, the taxpayer owned three fast food restaurants. The taxpayer submitted a utility study to the Department, which resulted in a predominant use exemption for the audit period for two restaurants. The third restaurant was granted an exemption beginning May 1993. The restaurant was billed for sales tax for the first four months of the year.

The auditor conducted a study for the audit period. The results of the study concluded that electricity was not used predominantly in the direct production of food. The taxpayer protests this assessment and states that the assessment should not be retroactive.

I. Sales and Use Tax - Utility Used in Production

DISCUSSION

The taxpayer protests the imposition of sales tax based upon a Department investigation, which revealed that the taxpayer's predominant usage exemption of one hundred percent (100%) was not correct. The Department's investigation found that for the years ending December 31, 1993 and 1994, the utility exemption should have only been forty-seven percent (47 %) instead of one hundred percent (100 %). The taxpayer argues that the Department had issued the predominant usage exemption for the tax years, and that this percentage should not be retroactively changed for the audit years. The taxpayer was notified on Form 200A that the request for exclusion from sales tax on electricity purchased was completed based upon the information that the taxpayer supplied to the Department. In the audit, the Department found that the information relied upon in granting the one hundred percent (100%) exemption was not correct. According to the Department's Form ST-109 (Indiana Utility/Communications Sales Tax Exemption Certificate) which the taxpayer signs, the utility exemption is subject to review by the Department.

The forty-seven percent (47%) exemption stands for the audit period. The Department's utility study showed that the information upon which the Department relied upon was incorrect. Therefore, the taxpayer was not entitled to a predominant usage exemption during the audit period.

FINDING

The taxpayer's protest is respectfully denied.

II. Tax Administration – Imposition of Negligence Penalty

DISCUSSION

Indiana Code 6-8.1-10-2.1 states, in part, that if the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty."

Regulation 45 IAC 15-11-2 also states,

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

The Department finds that the taxpayer relied on a utility usage study performed by a third party. The Department's own study showed that the taxpayer was near the predominant usage threshold. The taxpayer used reasonable care in relying upon the third party study.

FINDING

The taxpayer's protest is sustained in regard to the penalty issue.